Supreme Court, U.S.
FILED
SEP 2 2003
OFFICE OF THE CLERK

No. 03-196

In the Supreme Court of the United States

EDWARD L. MOSKAL,

Petitioner,

v.

DELPHI AUTOMOTIVE SYSTEMS, INC.

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENT DELPHI AUTOMOTIVE SYSTEMS, INC.'S BRIEF IN OPPOSITION TO EDWARD MOSKAL'S PETITION FOR WRIT OF CERTIORARI

ROBERT S. WALKER
Counsel of Record
JOHANNA FABRIZIO PARKER
JONES DAY
NORTH POINT
901 LAKESIDE AVENUE
CLEVELAND, OH 44114-1190
(216) 586-3939

Counsel for Respondent
Delphi Automotive Systems, Inc.

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

9 pp

QUESTION PRESENTED

Petitioner Edward Moskal applied for a bargaining unit job with respondent Delphi Automotive Systems, Inc. ("Delphi") in 1999. He was hired once he completed all pre-hire requirements, including a physical examination and drug screen. He presented for the exam and drug test on June 25, 1999. He was unable to complete all aspects of the physical exam at that time; among other things, he was unable to provide a hair sample for a drug test due to his alopecia universalis condition (total loss of hair). In the following weeks, he was able to complete the physical exam and drug test through alternate means (e.g., a urine sample). He was hired on August 2, 1999, and continues to work for Delphi.

Moskal asserted that the delay in his hire date constituted discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., due to his purported disabilities of alopecia and hemifacial scapular muscular dystrophy ("MD"). The District Court found that Moskal was not disabled as defined by the ADA and Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002), and the Sixth Circuit affirmed.

The Petition raises the following issue:

(1) Did the Court of Appeals for the Sixth Circuit reversibly err in affirming the District Court's grant of summary judgment in favor of Delphi as to Moskal's claim of disability discrimination under the ADA, when the undisputed evidence (including plaintiff's own admissions in deposition testimony) established that he was not substantially limited in any major life activity.

TABLE OF CONTENTS

Question Presented i

Table Of Authorities iii

Statement Of The Case 1

I. Clarification Of The Record 1

II. Moskal's Asserted Claim 2

Reasons For Denying The Writ 3

I. Moskal Has Not Articulated A Compelling Reason To Justify Discretionary Review By This Court . 3

II. The Lower Courts Did Not Err In Deciding This Case 4

Conclusion 5

TABLE OF AUTHORITIES

CASE

Toyota Motor Mfg., Ky., Inc. v. Williams,
534 U.S. 184 (2002) . . . . . i, 4, 5

STATUTES

42 U.S.C. § 12101 i

42 U.S.C. § 12102(2) 4

REGULATION

29 C.F.R. § 1630.2(i) 4

RULE

Sup. Ct. R. 10 3

RESPONDENT DELPHI AUTOMOTIVE SYSTEMS, INC.'S BRIEF IN OPPOSITION TO EDWARD MOSKAL'S PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The Court of Appeals for the Sixth Circuit and the U.S. District Court for the Northern District of Ohio accurately stated the pertinent, undisputed facts related to Moskal's claim. [Pet'r App. A1-A6, B1-B10]. Briefly, Moskal applied for a job with Delphi in 1999, completed the pre-hire requirements (including a physical examination and drug test), was hired, and has worked for Delphi since August 2, 1999. His assertion below was that he should have been hired about three weeks earlier, prior to completing all pre-hire requirements.

I. CLARIFICATION OF THE RECORD

The "facts" recited in the Petition bear little resemblance to the record facts below. [Pet'r App. B-1-B-4]. Delphi never guaranteed that Moskal would be hired. Delphi never guaranteed that his application for employment would be processed within any period of time. As part of the application process, Moskal, like all potential employees, was required successfully to complete a physical examination and drug screening. The exam took place on June 25, 1999. Delphi generally performed drug tests using a hair sample.

At the examination, Moskal stated to Delphi's plant physician Dr. Luna that Moskal had hemifacial scapular muscular dystrophy ("MD") and alopecia universalis (the absence of all body hair). Moskal also presented with elevated blood pressure and became agitated during the examination. The plant physician required that Moskal's

treating physician verify that Moskal did not suffer from hypertension. Due to his agitated state, Dr. Luna also required Moskal to undergo psychological testing prior to being hired.

At the examination, Moskal was unable to provide a hair sample for the drug test. Due to the need to monitor Moskal for possible hypertension and to conduct psychological testing, Delphi did not go forward with alternate drug testing on June 25, 1999.

Later on June 25, 1999, Moskal brought a letter from his treating physician, Dr. Minick, stating that Moskal did not appear to suffer from hypertension, but further indicating that Dr. Minick would monitor Moskal's blood pressure for a couple of weeks. On July 9, 1999, Dr. Minick reported the results of his monitoring, i.e., that Moskal did not suffer from hypertension. Subsequently, Moskal underwent psychological testing and a report was provided to Delphi on July 29, 1999. During this same period, Delphi also proceeded with Moskal's drug testing through alternate means; on July 20, 1999, he was asked to and did provide a urine sample, and was able successfully to complete the drug screening. Once he completed all pre-hire requirements, Moskal was hired. He began work for Delphi on August 2, 1999, and continues to be a Delphi employee.

II. MOSKAL'S ASSERTED CLAIM

Moskal asserted that he was discriminated against in violation of the ADA because Delphi did not immediately provide for an alternate drug test. Moskal ignores the fact that he was unable to complete several aspects of the pre-hire physical examination on June 25, 1999 (e.g., monitoring his possible hypertension, psychological testing, and drug

screening). Moskal also disregards the fact that, within a few weeks, Delphi provided for an alternate drug test, enabling him to begin work on August 2, 1999.

REASONS FOR DENYING THE WRIT

I. MOSKAL HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." Id. Moskal has not presented any compelling reason for this Court to exercise discretionary jurisdiction over his attempted appeal of the dismissal of his claim. Indeed, his key complaint, that he should have been provided an alternate drug test on June 25, 1999, was squarely addressed by the Courts below.

Moskal asserted that his alopecia substantially limited his ability to provide a hair sample for the drug test, and that this test should be considered a major life activity.[1] The District Court found that providing a hair sample for an employment related drug screening was not a major life activity. [Pet'r App. B-9]. Moskal's inability to complete the drug screen on June 25, 1999, did not render him substantially limited in a major life activity, a requirement to establishing a claim under the ADA. [Id.] Other than his own conclusory assertion to the contrary, Moskal offers no reason to disregard and

[1] Moskal has not stated in his Petition, and had not argued in the courts below, how his MD allegedly had an impact on the timing of his hire.

reevaluate this decision. He also identifies no conflict in the circuit (or other) courts on this issue, nor could he.

II. THE LOWER COURTS DID NOT ERR IN DECIDING THIS CASE

In addition, summary judgment was properly entered against Moskal. He failed to submit any evidence that either his MD or alopecia constituted a disability under the ADA. The ADA defines a disability as "a physical or mental impairment that substantially limits one or more of the [individual's] major life activities..." 42 U.S.C. § 12102(2). [Pet'r App. A-5]. Moskal admitted in deposition that he was not substantially limited in any of his major life activities, including driving, walking, sleeping, sitting, standing, interacting with his family, getting dressed, thinking, speaking, breathing, seeing, and lifting. He admitted that he was able to perform one of the most physically demanding jobs at Delphi without accommodation.

Further, the lower courts properly followed this Court's decision in Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002), in finding that Moskal failed to establish that he was disabled under the ADA. In Toyota, this Court instructed that "major life activity" "be interpreted strictly to create a demanding standard for qualifying as disabled." Id. at 197. A major life activity must be "of central importance to daily life." Id. See also 29 C.F.R. §1630.2(i) (defining major life activities to include walking, seeing, hearing, breathing, and caring for oneself). This Court further found that "[i]t is insufficient for individuals attempting to prove disability status . . . to merely submit evidence of a medical diagnosis of an impairment"; rather, an ADA claimant must prove that his physical limitations due to his alleged disability are "substantial." Toyota, 534 U.S. at 198.

The lower courts appropriately ruled that Moskal failed to meet his burden of proof. [Pet'r App. A-5-A-6; B-9-B-10]. Moskal admitted that he was not substantially limited in any way due to his MD or his alopecia. Therefore, he was not disabled under the law. Moskal presents no reason to reevaluate this decision. Moreover, his Petition cites no contrary (or more recent) authority to discredit the lower courts' proper reliance on Toyota.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

Robert S. Walker
Counsel of Record
Johanna Fabrizio Parker
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939
Counsel for Respondent
Delphi Automotive Systems, Inc.